IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.171/2001.

Additional Deputy Collector &
Land Acquisition Officer, be
served through the Executive
Engineer, W.D. VII (NH),
Public Works Department,
Panaji, Goa. ..... Appellant.

V/s.

Communidade of Murda, having
its Office at Murda, Merces,
Tiswadi, Goa. ..... Respondent.

Mr. S. S. Kantak, Advocate General with Ms. G. Bhonsule, Addl. Government Advocate for the appellant.

Mr. A. R. Kantak, Advocate for the respondent.

CORAM : R.M. LODHA &
N.A. BRITTO, JJ.

DATE : 29TH AUGUST, 2005.

ORAL JUDGMENT (Per R.M. LODHA, J.)

This appeal is at the instance of the Additional Deputy Collector and Land Acquisition Officer through the Executive Engineer who is aggrieved by the Judgment and Award dated 30th April, 2001 passed by the Additional District

Judge, Panaji in Land Acquisition Case No.79/1985.

2. The respondent's land came to be acquired for realignment of road from Km. 0.00 to 4.67 outside built-up area of Santa Cruz on Panaji-Karnataka Border section of N.H. No.17. The Notification under Section 4 of the Land Acquisition Act, 1894 was published on 16.1.84. The declaration under Section 6 of the Land Acquisition Act was also published in the Official Gazette. Thereafter, the concerned Land Acquisition Officer determined the compensation and awarded compensation at the rate of Rs.20/- per sq. metre for the compulsory acquisition of the respondent's land vide Award dated 28.3.1985. The present respondent received the notice of the Award and made an application on 26.8.1985, seeking reference under Section 18 of the Land Acquisition Act. The Award was, accordingly, referred to the District Court. The statement of claim was made by the present respondent in the Court of the Addl. District Judge, North Goa, at Panaji on 10.2.1987, claiming compensation at the rate of Rs.250/- per sq. metres since, according to the respondent, at the time of Notification issued under Section 4 of the Land Acquisition Act the market value

of the subject-land was Rs.250/- per sq. metre. Before the reference Court, in support of its claim the respondent produced Award Part II of the Land Acquisition Officer (Exhibit AW.1/E); Award Part III of the Land Acquisition Officer (Exhibit AW.1/F) and the Judgment of the District Judge, Panaji dated 29.9.94 in Land Acquisition Case No.42/88 (Exhibit AW.1/G) amongst other documents. The reference Court, on consideration of the evidence on record, held that the market value of the subject-land on the date of publication of Section 4 Notification was Rs. 112/- per sq. metre and fixed the market value accordingly. The reference Court ordered that the respondent shall be entitled to the 50% enhancement only as the land was tenanted. The reference Court also ordered that the respondents shall be entitled to 30 % solatium on the value of the land and 12 % interest per annum on the said value of land for the period from 16.1.1984 i.e. date of publication of Notification under Section 4 of the Land Acquisition Act. The reference Court further awarded 9 % interest per annum for the first year from the date on which the Collector took possession of the acquired land and at the rate of 15 % per annum from the second year until the excess amount was paid.

3. The aforesaid Judgment and Award passed by the Additional District Judge, Panaji on 30th April, 2001 is under challenge in this appeal.

4. At the outset, it may be noticed that the respondent does not dispute the area of land for which the award was determined by the Land Acquisition Officer. The details of the said land for which compensation has been determined are thus :

Sr. No	***Plot/Survey No.***	***Area in sq. metres***
1	114/22	4
2	114/25	569
3	114/12	210
4	114/27	259
5	114/13	205
6	114/14	255
7	114/15	240
8	114/16	429
9	114/17	219
10	114/18	300
11	114/19	438
12	114/20	297
13	114/21	290
14	106/1	269
15	106/2	230
16	106/3	250
17	106/4	800
18	106/5	400

Sr. No	***Plot/Survey No.***	***Area in sq. metres***
19	105/1	1230
20	105/2	210
21	105/3	200
22	105/4	205
23	105/5	225
24	104/1	225
25	104/2	250
26	104/3	385
27	104/4	490
28	103/1	237
29	103/2	131
30	103/3	140
31	103/4	454
32	103/5	270
33	103/6	270
34	103/7	179
35	103/8	386
36	101/1	184
37	101/2	180
38	101/3	190
39	101/4	475
40	101/5	105
41	101/6	100
42	101/7	82
43	101/8	86
44	100/1	40
45	100/2	12
46	123/3	56
47	123/4	72
48	123/5	148
49	123/6	152
50	123/7	219

Sr. No	***Plot/Survey No.***	***Area in sq. metres***
51	124/1	235
52	124/2	160
53	124/3	144
54	124/4	140
55	124/5	200
56	124/6	242
57	124/7	244
58	124/8	230
59	125/1	197
60	125/2	188
61	125/3	166
62	125/4	494
63	125/5	269
64	125/6	275
65	125/7	454
66	125/8	530
67	93/1	244
68	93/2	215
69	93/2A	205
70	93/3	200
71	93/4	206
72	76/1	232
73	76/2	113
74	76/3A	91
75	76/4	227
76	76/5	294
77	76/6	366
78	76/7	719
79	76/8	550
80	76/9	529
81	76/10	550
82	76/11	544

Sr. No	***Plot/Survey No.***	***Area in sq. metres***
83	76/11A	540
84	76/12	484
85	76/13	782
86	76/15	440
87	76/15A	1130
88	76/17	343
89	76/18	96
90	76/19	131
91	76/20	370
92	76/21	128
93	75/2	1450
94	75/3	1570
95	74/1	1603
96	74/2	875
97	74/5	937

The respondent has also not disputed the apportionment made between the respondent and the tenant at the rate of 50 % to each of them.

5. The reference Court relied upon the Judgment and Award passed by the District Judge, Panaji in Land Acquisition Case No. 42/88 and the Judgment and Award dated 11.3.1993 passed in Land Acquisition Case No.88/85 in enhancing the compensation. The question that arises for consideration is whether the two Awards, upon which reliance was placed by

the reference Court, are comparable for determination of the market value of the subject-land ?

6. First, we shall refer to the Judgment and Award dated 29th September, 1994 (Exhibit AW1./D). In that case, by the same Notification issued under Section 4 of the Land Acquisition Act and published in the Official Gazette on 16.1.1984, the Government proposed acquisition of the land for the purpose of alignment of road for which the subject-land has been acquired. In other words, the Judgment and Award dated 29th September, 1994 relates to the same Notification and for the same public purpose for which the subject-land has been acquired. In that case, the area of the acquired land was 6392 sq. metres from survey Nos.88, 89, 90, 91, 92 and 93. The land was situated in the Village Murda like the subject-land. That Village Murda lies on either side of Panaji – St. Cruz Road is not in dispute. The land in that Case was towards the Panaji side of that road. The subject-land is further towards the Panaji side from that land. Taking all relevant facts and parameters into consideration, we find no material difference in the two lands for the purpose of determining the market value. In Land Acquisition Case No.42/88, decided vide

Judgment and Award dated 29th September, 1994, the market value was fixed at the rate of Rs. 112/- per sq. metre. The market value of the subject-land also has to be fixed at the rate of Rs. 112/- per sq. metre and that is what has been done by the reference court.

7. Now we advert to the Judgment and Award dated 11.3.1993 passed in Land Acquisition Case No.88/85. It may be immediately noticed that the land in the said case was also compulsorily acquired for realignment of road from Km. 0.00 to 4.67 outside built-up area of St. Cruz on Panaji-Karnataka border Section of National Highway No.17 and under the same Notification published under Section 4 of the Land Acquisition Act on 16.1.84. In Land Acquisition Case No.88/85, the land acquired admeasured 25,202 sq. metres. In that case reference has been made to various other Awards passed in the matter of various expropriated owners whose lands were acquired for the same purpose and under the same Notification and the compensation has been fixed at the varying rates from Rs. 112/- per sq. metre to Rs. 200/- per sq. metre. The learned Advocate General could not point out and demonstrate any justifiable ground that would persuade us to hold that the rate

fixed @ Rs. 112/- per sq. metre in Award dated 11.3.1993 could not be applied to the subject-land.

8. The learned Advocate General fairly submitted that none of these two Judgments, namely the Judgment and Award dated 29.9.1994 in Land Acquisition Case No. 42/88 and the Judgment and Award dated 11.3.1993 in Land Acquisition Case No.88/85 was challenged by the Land Acquisition Officer. He fairly conceded that the compensation fixed in the aforesaid two Awards has attained finality. We are, thus, satisfied that the market value fixed at the rate of Rs.112/- per sq. metre by the reference Court does not suffer from any factual or legal error.

9. Incidently, we may notice that in Part III Award dated 15.11.1985 (at page 101 to 118 of the paper book) that related to the acquisition of land which was subject-matter of land acquisition reference No.42/88, the Land Acquisition Officer himself observed that the land for acquisition in Murda Village vide his Award Part -III was not different from the land in Murda Village already acquired vide Award Part II, except a part of the land of 91 sq. metres under Survey No.76/16 which

was in the use for commercial purpose of slaughtering animals and selling meat during the last 60 years. It would be, thus, seen that the land that was subject-matter of Land Acquisition Case No.42/88, according to the Land Acquisition Officer himself was not materially different from the subject-land and, therefore, the market value fixed for the land was involved in Land Acquisition Case No.42/88 can be applied to the subject-land without any hesitation.

10. All in all, the determination of the market value of the subject-land at the rate of Rs.112/- per sq. metre is neither excessive nor exorbitant and does not call for any interference.

11. In so far as the cross objections are concerned, the learned Counsel for the respondent did not press it.

12. The First Appeal as well as the Cross Objections are liable to be dismissed and we dismiss them accordingly. No costs.

R.M. LODHA, J.

N.A. BRITTO, J.

ssm.